1   PRELIMINARY MATTER

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3   Applicant has submitted a PTO-1449 and one reference, COPY attached; certified as

4   deposited as first class mail on May 1, 2002, prior to the issuance of the first Office

5   Action in this file history. Consideration by the Office should be confirmed to the

6   undersigned by appropriate initial and dating. Please send the information to the

7   undersigned at the given address or fax it to the undersigned at 425-640-0525

8

9   (1)   Not required; no amendments filed herewith.

10
11   (2)   No specification amendments are required.
12
13   (3)   REMARKS
14
15   RE PARA. 1 and PARA. 2 and PARA. 3 OF THE "FINAL" ACTION
16

17   All pending claims, 1 – 20, were rejected under *newly cited* U.S. Pat. No. 6,304,860

18   (Martin, Jr. et al., more simply hereinafter "Martin" or "the reference"). A petition

19   regarding the appropriateness of the designation of the Action as "Final" in view of "the

20   new ground(s) of rejection" is filed herewith.

21

22   It is believed by the applicant that this rejection is based on an flawed analysis of both

23   the present application and the reference.

24

25   1. MARTIN JR. ET AL. DOES NOT STAND FOR THE PROPOSITION RELIED UPON
26   IN THE ACTION
27

28   First, with respect to the present application, the present Final Office Action and the

29   previous first Office Action – which cited the now withdrawn Ogilvie reference - both

30   seem to indicate that the USPTO analysis is based on the misunderstanding that a "real

31   estate escrow" – the processes of which are encompassed by the present invention - is

32, simply a type of financing arrangement. This is not correct. The only connection

33   between the real estate escrow and financing arrangements is that in a non-cash

34   transaction for purchase and sale of real estate, the property buyer may be obtaining a

35   mortgage to meet the sale price and the property seller may be paying off an existing

36   mortgage on the property. This is only one small element of a real estate escrow.

37

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2

1   More to the point, the escrow company is charged with ensuring the terms of condition of

2   a purchase-and-sale contract for a specific property are verified and fulfilled prior to the

3   transfer of the deed of ownership from a seller to a buyer. The many duties of a real

4   estate escrow transaction are illustrated by contiguous FIG. 1A, 1B and 1C of the

5   present application. Only one small segment is related to debt payment, namely pay-off

6   of the property seller's mortgage, if any, and the verification of the buyer having obtained

7   a mortgage, if any (i.e., if not paying cash). In fact, this is not a necessary element to the

8   escrow, as the seller can choose to pay off his mortgage, if any, separately or perhaps

9   even transfer responsibility for mortgage payments to the buyer; these are peripheral

10   agreements to the escrow transaction as a whole. It can be readily seen from present

11   applicant's specification that a real estate escrow is far more complex than a simple

12   loan-and-payment transaction, involving many parties and entities.

13

14   Turning now to the reference, Martin Jr. et al. (hereinafter also referred to as simply

15   "Martin") only describe an AUTOMATED DEBT PAYMENT SYSTEM AND METHOD

16   USING ATM NETWORK, what is described is a totally different concept, specifically

17   limited to existing debt-and-payment transactions. Perhaps most importantly, it is noted

18   that this cited reference has to do with payments on an *existing* debt. In a real estate

19   escrow, for the buyer of the property, such a system and method would only be used

20   *after escrow closed* because until such time, there is no existing debt. Thus, thinking in

21   terms of the applicant's flow chart compared to Martin's FIGURE 2 and 3 relied upon by

22   the Examiner, Martin's processes can only be implemented *after escrow is closed.* See

23   FIG. 1C, element 317. In other words, everything Martin does is for a situation in real life

24   which is completely downstream of element 317, "CLOSE ESCROW" of applicants FIG.

25   1C, when the buyer now has taken title to the property and perhaps post-escrow

26   incurred the new mortgage.

27

28   As to the seller and any existing mortgage, the Martin system is likely not applicable as

29   one can not miss the intent of the system and method for improving the consumer's

30   ability to make to make one payment of a series via use of an ATM machine. See e.g.,

31   Martin col. 4, line 17 – col. 5, line 35, where each and every stated "object of the present

32   invention" – 16 in all presented – has to do with *existing debt payment.* Directly contrary

33   to this is a real estate escrow where for the seller there is a one-time payoff of the whole

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3

1 mortgage, if any, either by the seller through the escrow company or by the use of funds

2 from the buyer deposited with the escrow company.

3

4 Further evidence that Martin anticipates only existing loan payment solutions is given at

5 e.g, col. 9, ll. 37-43 and throughout his claims, each independent claim relating to

6 payments for a ". . .consumer debt obligation using an ATM network. . .."

7

8 The law is clear. A valid rejection on the ground of anticipation requires the disclosure in

9 a single prior art reference of each element of the claim under consideration.

10 Soundscriber Corp. v. U.S., 148 USPQ 298, 301 (1966); In re Donohue, 226 USPQ 619,

11 621 (Fed. Cir. 1985).

12

13 Looking to the Action's primary argument, whereas in para. 3 of the Action against the

14 present application's independent claims 1 ("Apparatus for real estate escrow

15 transactions, comprising. . ."), 11 ("Computerized method for real estate escrow

16 transactions, . . ."), and 17 ("A computer memory having a program for real estate

17 escrow transaction. . ."), the Action alleges

18   ". . .Martin teaches apparatus *(fund allocation methodology)* for real state [sic]

19 escrow transactions *(real estate transaction). . .*,"

20   there is absolutely no such disclosure at all in Martin. Martin only discloses

21 automating existing debt payment through programming ATMs accordingly.

22

23 Moreover, in that Martin is only for existing debt payment automation and not any

24 escrow system at all. It is not an appropriate reference under Section 102. In

25 applicant's opinion, it is even non-analogous art.

26

27 It is respectfully submitted that all the rejections be withdrawn.

28

29 2. RE PARA. 4 - 15 OF THE ACTION, INDIVIDUALLY RELIED UPON SECTIONS OF
30 MARTIN DO NOT TEACH ANYTHING REGARDING REAL ESTATE ESCROW
31
32 The Action relies on specific segments of the reference for all further rejections of

33 applicant's claims. The citations are chain cited at the end of each objection verbatim;

34 there is no given connection between the citation and specific segments of the

4

1 . immediately preceding argument, and thus applicant must respond in kind. The

2 arguments are flawed and can not stand.

3

4 In each rejection, the Action relies upon the "abstract." In fact, there is no mention of

5 real estate escrow in the Abstract.

6

7 In each rejection, the Action relies upon "fig 2, 3." Turning to Martin's own definitions,

8 col. 8, Figure 2 "shows a block diagram of the present invention illustrating the

9 transactions that occur during the *payment of a debt obligation...*," Figure 3 "is a

10 flowchart illustrating the process of a *debt obligation payment...*" (emphases added.)

11 These can not relate to a real estate escrow because it is not until after the successful

12 close of the escrow when the buyer must start monthly payments on his new mortgage,

13 if any.

14

15 In each rejection, the Action relies upon col. 4, lines 44-55, which begins, "It is also an

16 object of the present invention to reduce payment processing costs for debt servicers,

17 such as lone servicers (e.g., mortgage, auto and home equity loan servicers, other

18 monthly consumer debt and bill payment processors (e.g., credit card companies, public

19 utilities, and phone and cable companies), and time payment processors...." Because

20 Martin mentions "mortgage" and "home equity" here, it may have been the cause of

21 confusion in thinking that an "escrow company" is a "loan servicer," as the Action

22 implies. This is not true. *Real estate escrow companies have no such banking or*

23 *consumer financing services; it is merely a form of holding company for verifying the*

24 *accuracy and completion of terms of a contract for a purchase-and-sale of a given*

25 *property.* The transfer of funds therethrough is merely one aspect as clearly shown in

26 applicant's drawings and described in the specification. In fact, this paragraph speaks to

27 *applicant's* favor in that it is undeniable that the description here has to do with a single

28 payment of many on a continuing, existing debt. This is contrary to an escrow

29 transaction. Moreover, lines 54-59 clearly signify the use of the ATM for such a payment

30 on a "...loan or debt payment is due or past due...." In fact, in a real estate escrow, it

31 is not even possible to offer such methods because any loan debt obligation in a real

32 estate escrow is not issued nor effective until the successful closing and the passing of

33 clear title from Seller to Buyer.

34

EXHIBIT NO. ___B4___

5

1. In each rejection, the Action relies upon "col. 5 line 36-61." This section begins, "These

2. and other objects are achieved by the present invention, which provides. . .." Here

3. Martin begins his summaries of his invention. Nothing in this section speaks to a real

4. estate escrow. Martin uses the terms "loan servicer(s)," line 39 for "non-bank loan

5. payment processors" and "third party loan payment facilitator(s)" which is apparently a

6. computer sevice company which ", . . .reformats the data as necessary, appends this

7. information with any similar information received from other loan or debt servicers, and

8. transmits the appended information to one or more ATM transaction processors." The

9. gist of the latter is that it is a network provider which implements Martin's invention for

10. existing debt payments. Neither of these have any function with real estate escrow

11. transactions.

12.

13. In each rejection, the Action relies upon col. "10 line 22-56." This section clearly has to

14. do with loan servicing, the citation beginning, "As mentioned above, loan servicer 24. . .."

15. Martin calls for ". . .the burden of the loan officer to segregate funds received from a

16. consumer is eliminated, while segregation required by investors is maintained. . .."

17. There is no loan servicer involved in performing the real estate escrow process; the

18. conventional term of art would be "escrow agent." If the buyer has secured a mortgage,

19. it does not become a legal debt and the buyer has no obligation to make payments until

20. after the close of escrow when the buyer has gained legal title to the property.

21.

22. In each rejection, the Action relies upon "table 1, column 13 and 14." The Examiner has

23. apparently boxed col. 14, lines 8-13, which mention

24.   "Current Escrow Tax Owed - Amount of payment that will be applied to local

25. property taxes manage by servicer, if any"

26. and

27.   "Current Escrow Insurance Owed – Amount of payment due that will be applied

28. to pay premeium on home owners insureance managed by servicer, if any."

29. It is obvious why the Martin patent has confused the issues here. In fact, the author of

30. the Martin patent has used a misnomer. It is well known to those skilled in the art, and

31. even to anyone who has taken out a mortgage, so therefore it can be even called

32. ubiquitous, that such are not "escrow" amounts but are *"impound"* amounts. Even so,

33. impounds are not part of a real estate escrow transaction, but are merely terms and

34. conditions of the mortgage contract agreement between the buyer and his mortgage

1 provider; the lender *impounds* monies paid beyond that needed to pay down the

2 mortgage to pay taxes and insurance on the property because the lender does not trust

3 the borrower to make such payments on the property which secures the loan. Again, if a

4 loan is secured by a buyer and funded by such a lender, impound payments and

5 segregation would not be needed until after the close of escrow, being part of the loan

6 payments thereafter.

7

8 Martin does discuss mortgage payments specifically at col. 7, lines 6-14, and col. 8, lines

9 5-11. Such payments are made only after an escrow has closed. Again, it is

10 overwhelmingly clear that Martin Jr. et al. provides not a shred of evidence to support

11 anticipation of the present invention. The arguments by the USPTO are *non sequitor*, in

12 real life, Martin's system and method can only apply to existing financial obligation

13 payments; with respect to real estate escrows, such exist only after escrow has closed.

14

15 It is respectfully requested that all of the rejections be withdrawn.

16

17 SUMMARY AND CONCLUSION

18

19 The Actions against this application have focused on financial transactions. This is not a

20 main focus of a real estate escrow although in some, but not all real estate escrows,

21 mortgage providers might be involved merely as one party. Applicant's method and

22 apparatus is for real estate escrow automation in its entirety.

23

24 Based upon the foregoing and the amendments, if any, it is submitted that the

25 application now presents claims which are directed to novel, unobvious, and distinct

26 features of the present invention which are an advance to the state of the art. No new

27 matter has been added to the application. Reconsideration and early allowance of all

28 claims is respectfully requested. The right is expressly reserved without prejudice to

29 reassert any and all arguments, to raise new arguments, and to make further

30 amendments should a Notice of Allowance not be forth coming.

31

32 (4) AMENDMENTS: VERSIONS WITH MARKINGS TO SHOW CHANGES MADE

33

34 Not applicable.